

**FBFG** | Finkelstein, Blankinship,  
Frei-Pearson & Garber, LLP

March 27, 2018

Via ECF

Honorable Andrew T. Baxter  
United State Magistrate Judge  
United States District Court – Northern District of New York  
100 South Clinton Street  
Syracuse, NY 13261

Re: ***Gonzales v. Agway Energy Services, LLC*, No. 5:18-cv-00235-MAD-ATB**

Dear Judge Baxter:

On March 23, 2018, Your Honor issued an Order in response to Defendant's March 22, 2018 letter concerning Defendant's desire to suspend discovery until the pending motion to dismiss is decided. ECF No. 41. Plaintiff submits the instant letter to respectfully request that the Court clarify its Order, as the parties have reached an impasse as to its implications.

Pursuant to Rule 26(f)(1), "[e]xcept in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B) or when the court orders otherwise, the parties must confer as soon as practicable -- and in any event at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b)." Your Honor's February 26, 2018 Order likewise requires that a Rule 26(f) Conference take place "no later than twenty-one (21) days before the schedule Rule 16 Conference." ECF No. 25 at 5.

Although Your Honor's March 23, 2018 Order adjourns the April 18, 2018 deadline for the submission of the Civil Case Management Plan, it notably does not postpone the Rule 16 Conference (April 25, 2018) or the related Rule 26(f) Conference deadline (April 4, 2018), despite Defendant's specific request to stay the Rule 16 Conference "along with all of the related deadlines" while the motion to dismiss is pending. Indeed, the Federal Rules and this Court's February 26 Order require that the parties engage in a Rule 26(f) Conference at least 21 days before the Rule 16 Conference, independent of whether the Court requires the provision of a Civil Case Management Plan. *See, e.g.*, Fed. R. Civ. P. 26(f)(1) (requiring a conference "at least 21 days before a scheduling conference is to be held or a scheduling order is due under Rule 16(b)") (emphasis added). Thus, in light of the Court's decision to proceed with the Rule 16 Conference and its failure to stay related deadlines other than the Civil Case Management Plan deadline, Plaintiff believes that the parties are required to hold the Rule 26(f) Conference.

Defendant, on the other hand, contends that the Order adjourning the Civil Case Management Plan deadline implicitly stays all deadlines. On that basis, Defendant refuses to participate in a Rule 26(f) Conference.

For the foregoing reasons, Plaintiff respectfully requests that this Court clarify its March 23, 2018 Order and Order Defendant to participate in a Rule 26(f) Conference.

Respectfully Submitted,

s/ D. Greg Blankinship

D. Greg Blankinship

Todd S. Garber

Chantal Khalil

**FINKELSTEIN, BLANKINSHIP,  
FREI-PEARSON & GARBER, LLP**

445 Hamilton Avenue, Suite 605

White Plains, New York 10601

Tel: (914) 298-3281

Fax: (914) 824-1561

[gblankinship@fbfglaw.com](mailto:gblankinship@fbfglaw.com)

[tgarber@fbfglaw.com](mailto:tgarber@fbfglaw.com)

[ckhalil@fbfglaw.com](mailto:ckhalil@fbfglaw.com)